

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN STEVEN SYKES,

Defendant-Appellant.

UNPUBLISHED

August 16, 2007

No. 270686

Wayne Circuit Court

LC No. 05-009115-01

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of discharging a firearm at a dwelling, MCL 750.234b, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to six months to four years' imprisonment for the discharging a firearm at a dwelling conviction and two years' imprisonment for the felony-firearm conviction. Defendant appeals of right. We remand for resentencing on the discharging of a firearm at a dwelling conviction. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he is entitled to resentencing because the trial court failed to impose an intermediate sanction for his discharging a firearm at a dwelling conviction or state on the record substantial and compelling reasons for its failure to do so. We agree. This Court reviews sentencing issues for an abuse of discretion. *People v Sabin (On Remand)*, 242 Mich App 656, 660; 620 NW2d 19 (2000). "An abuse of discretion exists when the sentence imposed is not within the range of principled outcomes." *People v Havens*, 268 Mich App 15, 18; 706 NW2d 210 (2005).

Pursuant to MCL 769.34(4)(a), if the upper limit of the recommended minimum sentence range for a defendant determined under the sentencing guidelines is 18 months or less, the court must impose an intermediate sanction, unless the court states on the record a substantial and compelling reason to sentence the defendant to the jurisdiction of the department of corrections. *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002). An intermediate sanction means "probation or any sanction, other than imprisonment in a state prison or state reformatory, that may lawfully be imposed." *Stauffer, supra*, p 636 n 7. "To constitute a substantial and compelling reason for departing from the guidelines, a reason must be objective and verifiable, must irresistibly attract the attention of the court, and must be of considerable worth in deciding the length of the sentence." *Havens, supra*, p 17.

Defendant's recommended minimum sentence range was 0 to 17 months. Because the upper limit of the recommended minimum sentence range was 18 months or less, defendant qualified for an intermediate sanction for his discharging a firearm at a dwelling conviction. MCL 769.34(4)(a). Although defendant was entitled to an intermediate sanction for this conviction, the trial court imposed a sentence of imprisonment. The trial court did not state any reasons, yet alone substantial and compelling reasons, for its failure to impose an intermediate sanction for this conviction. For the reasons stated, we remand for resentencing. *Babcock, supra*, p 265. During resentencing the trial court must impose an intermediate sanction or articulate substantial and compelling reasons for its failure to do so. MCL 769.34(4)(a).

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly